IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No.5370 of 2003

Date of Decision: September 18, 2007

KR Gauba and others .....Appellants.

Versus

State of Haryana .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.KL Kohli, Advocate for the appellants.

Mr.Sidharth Batra, Assistant Advocate General, Haryana.

S. D. ANAND, J.

1. The plaintiff-appellants were initially in employment in the Erstwhile Capital Project Secretariat, Chandigarh. On abolition thereof, they were absorbed on the establishment of the Punjab Civil Secretariat. Initially, the benefit of the service rendered by them, as employees of the Capital Project Secretariat, was denied to them. They filed a Civil Suit (No.73 of 1973) for a declaration that they were entitled to be considered for seniority with effect from the date of their entry into the service in the Erstwhile Capital Project Secretariat. That suit was dismissed by the Civil Court vide judgment and decree dated 20.2.1975 on plea of limitation. The plaintiff-appellants did not file any appeal against that judgment and decree which has, accordingly, attained finality. Thereafter, the plaintiff-appellants filed a Civil Writ petition for that very relief. That writ petition was dismissed in limine by this Court.

2. However, in a compassionate view of things, the Government of Punjab granted an order on 26.10.1993 vide which the appellants were granted promotion with retrospective effect. For that purpose, super-numerary posts were created and the benefit of notional/presumptive pay was extended to them. The benefit of notional/presumptive pay towards pension was given to them only w.e.f. 28.10.1992. All the appellants had retired, on superannuation, prior to 29.10.1992. However, the benefit of notional/presumptive pay towards pension was extended to the post-29.10.1992 retirees.

3. The plaintiff-appellants filed Civil Suit No.531 of 1989 for a declaration that they would be entitled to the benefit of notional/presumptive pay towards pension with effect from the date of retirement upto 28.10.1992 as well as they had already been extended benefit to the post-28.10.1992 period. The averment, in the context, was that the denial of that benefit to them and the grant thereof to the post-28.10.1992 retirees was arbitrary and discriminatory.

4. The suit filed by the plaintiff-appellants was dismissed by the learned Civil Judge, Junior Division, vide judgment and decree dated 18.1.2000. The first appeal against the judgment and decree was dismissed by the then learned District Judge, Chandigarh, vide judgment and decree dated 4.8.2003.

5. The plaintiff-appellants are in the present Regular Second Appeal.

6. The following substantial questions of law arise for consideration in the present RSA:

1. Whether, in the face of the judgment and decree dated

20.2.1975 having attained finality, the present suit is not maintainable and is time barred.

2. Whether the grant of benefit of notional/presumptive pay towards pension to the post-20.8.1992 retirees and the denial thereof to the pre-28.10.1992 retirees, is discriminatory.

7. Both the Courts (learned Trial Court and also the learned First Appellate Court) were of the view that the judgment and decree dated 20.2.1975 having attained finality, the present suit filed by the plaintiff-appellants is time barred. It was further held that in view of the grant of benefit of notional/presumptive pay towards pension to the plaintiff-appellants by the Punjab Government on compassionate basis but with a rider that the benefit will accrue to them w.e.f. 28.10.1992 only, the plaintiff-appellants cannot be heard to accept one part of the relief and deny governess by the other part of the relief in the context of cut-off date fixed by the Government of Punjab.

8. Mr.KL Kohli, learned counsel for the appellants, relied upon **D.S.Nakara and others Vs. Union of India**, 1983 (2) SLR 246 and **Subrata Sen Vs. Union of India**, 2001(4) RSJ 576 in support of the advocated plea that the fixture of cut-off date in the indicated manner is discriminatory and arbitrary and deserves to be quashed by this Court.

9. Learned AAG , appearing on behalf of State of Haryana, argued that the plaintiff-appellants have to accept the package as a whole and they cannot accept the extension of benefit and reject the cut-off date fixed by the Government of Punjab therefor. After having given my careful thought to the pleas raised on behalf of the parties, I am of the considered opinion that both the Courts (learned Trial Court and the learned First Appellate Court) proceeded on an incorrect premise. In the first Civil Suit, the

plaintiff-appellants had claimed seniority with effect from the retrospective date. The denial of benefit of notional/presumptive pay in respect of the period of service rendered by them in the Erstwhile Capital Project was the subject of that suit. No doubt, that finding has attained finality. At the same time, it may be noticed that the suo motto extension of that benefit to the appellants vide the impugned order, though on compassionate basis, furnishes an independent cause of action to the appellants. The theory of acceptance of package whole hog is foreign to law. In its administrative discretion, the Government of Punjab decided to grant the relevant benefit to the plaintiff-appellants. However, in further exercise of its administrative discretion, it was decided that the benefit aforementioned for purpose of fixture towards pension would be available for the period intervening the date of retirement and upto 28.10.1992 would be available only to the post-28.10.1992 retirees but would not be available to the pre-28.10.1992 retirees. The fixture of cut-off date, I have no manner of doubt, furnished a new cause of action to the plaintiff-appellants. By the very nature of things, the impugned order having been granted in the year 1993, could not have been the subject of challenge in Civil Suit No.73 of 1973 which came to be dismissed vide judgment and decree dated 20.2.1975. Likewise, the impugned order could also not be the subject of challenge in the Civil Writ Petition filed by the plaintiff-appellants which was dismissed by this Court. Thus, there is no validity in the finding that the present suit is not competent or that it is time barred.

10. In so far as the fixture of the cut-off date (for pre and post 28.10.1992 retirees) is concerned, it is arbitrary and discriminatory and deserves to be invalidated. I place implicit reliance, in that view of mine,

upon the rulings rendered by the Apex Court in **DS Nakara and others and Subrata Sen (supra).**

11. No law taking a contrary view was cited before this Court.

12. In view of the above answers recorded in response to the substantial questions of law, the present appeal deserves to succeed. The impugned judgment and decree dated 4.8.2003 of the learned First Appellate Court is set aside. The present Regular Second Appeal shall stand allowed. The suit filed by the plaintiff-appellants for the grant of the relief (declined by both the Courts) shall stand decreed. The plaintiff-appellants are held entitled to the benefit of notional/presumptive pay towards pension from the date of retirement upto 28.10.1992.

(S. D. ANAND)
JUDGE

September 18, 2007
SRM

Note: Whether referred to reporter or not? Yes/No